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January 30, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 10, 2008

Case Number: TSO-0650

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time. [2]

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. During the course of that employment, the local security office acquired information that raised security concerns about the individual. The individual was summoned for interviews with a personnel security specialist in June 2007 and September 2007. After these Personnel Security Interviews (PSI), the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. After this evaluation, the DOE psychiatrist prepared a written report, and sent that report to the local security office. After reviewing this report, the transcripts of the PSIs, and the rest of the individual's personnel security file, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The manager of the local security office informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

[2] Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.oha.doe.gov . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm .

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced 24 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced five exhibits into the record and presented the testimony of six witnesses, in addition to testifying himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (h) pertains to information indicating that the individual has "an illness or mental condition which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in his judgement or reliability."10 C.F.R. § 710.8(h). As support for this paragraph, the Letter cites the DOE psychiatrist's diagnosis that the individual suffers from Caffeine-Related Disorder Not Otherwise Specified and General Anxiety Disorder, and that these are illnesses or mental conditions which, when considered in conjunction with each other and with other alleged addictive behaviors, cause or may cause a significant defect in the individual's judgement or reliability. The Letter also refers to statements made by the individual during the June and September 2007 PSIs indicating that, between 2002 and 2005, he discontinued the use of various prescribed drugs without consulting with the doctors who prescribed them, or any other medical professionals; that in November 2004, he was referred by his physician to a psychiatrist for a possible diagnosis of Bipolar Disorder, but never followed up on the referral because he decided that he did not suffer from the disorder; and that, during the early 1990s, his psychiatrist prescribed two medications for depression, but the individual threw the prescriptions away after deciding that he did not suffer from depression.

Pursuant to criterion (j), information is derogatory if it indicates that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse."10 C.F.R. § 710.8(j). Under this paragraph, the Letter cites the DOE psychiatrist's diagnosis that the individual suffers from alcohol abuse, the individual's 2007 and 1989 arrests for DUI and under-aged drinking, respectively, his acknowledgment during the psychiatric evaluation that he has had drinking binges, and his admission during the June 2007 PSI that he has consumed alcohol to the point of intoxication many times through the years.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to

consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

A. Derogatory Information and the Associated Security Concerns

The following information was provided by the individual before and during the hearing, and is generally undisputed. For purposes of clarity, I will set forth the derogatory information relating to the DOE's security concerns under criteria (h) and (j) separately.

1. Criterion (h)

During the period from December 1998 until October 2005, the individual received treatment from various medical and mental health professionals for emotional problems relating to stress at work and to his two divorces. In 1998, the individual was experiencing stress related to his work environment, and was referred to a mental health professional. This doctor diagnosed the individual as suffering from major depression secondary to work stress, and prescribed Paxil and Xanax. However, when the individual discovered that these drugs were used to treat depression, he refused to take them, believing that he only suffered from the effects of stress. September 10, 2007, PSI at 82. Nevertheless, his symptoms resolved quickly, and his prognosis was determined to be "good to excellent." DOE Exhibit (Ex.) 3.

In 2002, the individual was treated by his primary care provider for difficulty in going to sleep and anxiety related to his divorce and to his occupation. He was prescribed Ambien, which he continues to take on an as-needed basis for insomnia, and Lexapro for his anxiety. However, after approximately one month, the individual stopped taking Lexapro, without consulting with his doctor, because it made him drowsy. June 18, 2007, PSI at 22. Subsequently, the individual's doctor prescribed Effexor, also for his anxiety. Although this drug did not make him drowsy, his anxiety persisted and, in July 2003, the individual was prescribed Zoloft and Klonopin. Although the individual did report some benefit from taking the Zoloft, he stopped taking the Klonopin, again

without consulting with his doctor, apparently because he did not feel that it was helping him. *Id.* at 25.

During a 2004 consultation with another doctor who shared a practice with his primary care provider, that doctor suggested to the individual that he may suffer from Bipolar Disorder. The doctor prescribed Seroquel, which the individual took for one or two months, until he discovered that the medication was for the treatment of Bipolar Disorder, which the individual did not believe that he suffered from. Nevertheless, he saw this doctor again later that year, and was prescribed Depakote, another Bipolar Disorder medication. The individual took this drug for less than one month, and then quit taking it because it wasn't effective and because the individual did not believe that he suffered from the Disorder. The doctor also referred the individual to a psychiatrist, but the individual did not follow up on the referral because he did not believe that he suffered from any condition that would require a psychiatrist's care. The individual saw his primary care provider again in 2005, and during this visit, the doctor concluded that the individual suffered from Attention Deficit Disorder, and prescribed Strattera for the condition. The individual took this medication for approximately one or two months before discontinuing his usage, again without consulting with his doctor.

After the DOE-sponsored psychiatric evaluation that took place in March 2008, the DOE psychiatrist diagnosed the individual as suffering from Alcohol Abuse, Caffeine-Related Disorder Not Otherwise Specified, and Generalized Anxiety Disorder. DOE Ex. 13 at 10. In support of his diagnosis of Alcohol Abuse, the DOE psychiatrist cited the legal and job-related problems that the individual's alcohol use has caused. *Id.* Concerning the other diagnoses, the DOE psychiatrist cited the individual's "fairly excessive use of caffeine," from 200 to 600 mg, taken before the individual's workouts and weight-lifting sessions for the purpose of "giving him extra energy and motivation." *Id*. at 5. He also said that "Although I would disagree with [the] prior diagnoses of Bipolar Disorder or Adult Attention Deficit Disorder . . . , I would concur with a diagnosis of Generalized Anxiety Disorder. While this does not typically pose any security or reliability/judgement threat, it is further exacerbated by his use of caffeine excessively . . . ." *Id.* at 11. He further indicated that it was the "clustering" of "addictive behaviors" such as excessive caffeine use, anabolic steroid use and excessive exercise, that caused him the greatest concerns regarding the individual's judgement and reliability. *Id.*

2. Criterion (j)

The individual began drinking at age 16, and would consume, on average, four beers once per month. June 18, 2007, PSI at 134. Since this was the level of consumption that would result in intoxication, the individual was, in essence, drinking to intoxication an average of one time per month. The individual indicated that there were months when he did not drink at all, and that he would usually stop at four beers because he did not like the feeling of being out of control that further consumption would bring. *Id.* at 137-138.

On at least a couple of occasions during the mid-1990s, however, the individual exceeded this level of consumption. During a visit to the beach with some friends, the individual, who was 24 years old at the time, consumed "five to six" mixed drinks over a three or four-hour period, resulting in

dizziness and other unpleasant physical effects. Approximately a year later, he consumed a large amount of pure grain alcohol with Kool-Aid, again with friends. DOE Ex. 13 at 7.

This pattern of consumption persisted until the individual's 2001 marriage. During that marriage, the individual's alcohol consumption decreased, although he would sometimes drink "one or two" beers before going to bed to help him sleep. June 18, 2007, PSI at 139. However, during both of his divorces, the individual's consumption increased markedly, to at least a six-pack per day, usually over an eight-to twelve hour period, on his days off from work. *Id.* at 146-147. After his divorces, he returned to his previous pattern of alcohol consumption, drinking to intoxication during most special occasions. *Id.* at 150.

The individual has also had two alcohol-related arrests. In 1989, while at the beach with some friends, the individual was arrested for under-aged drinking. In May 2007, the individual was arrested for Driving Under the Influence of Alcohol (DUI). During the week leading up to this arrest, he was in North Carolina with some friends to celebrate a friend's marriage. During this period, the individual consumed alcohol on a daily basis, drinking until he started to get a "buzz." Although he did not specify the amount of alcohol he consumed during this week or the period of time during which he drank, he stated that his drinking did increase as the week went on and that "It was each day and each time we were doing that so it was enough to get a buzz." Hearing transcript (Tr.) at 172. On the evening before the arrest, the individual allegedly consumed two mixed drinks at one local bar, two or three drinks at another bar, and then three or four beers at a friend's house, all in approximately three hours. The arrest occurred at approximately 5 a.m., and at approximately 8 a.m., the individual submitted to a blood test, which indicated a blood-alcohol content (BAC) of .16, which is twice the legal limit in the state in which the individual was arrested.

The circumstances se forth in IV.A.1 and IV.A.2 above adequately justify the DOE's invocation of criteria (h) and (j), and they raise significant security concerns. A duly qualified mental health professional has found that the individual suffers from emotional or mental conditions that could adversely impact his judgement and reliability. Furthermore, excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines), Guidelines G and I.*

B. Mitigating Information

At the hearing, the individual attempted to address these security concerns by showing, through his testimony and the testimony of his psychiatrist, his mother, and four co-workers, that he does not suffer from any alcohol use disorder or any mental or emotional condition that adversely affects his judgement or reliability.

The individual testified that he last consumed alcohol on May 24, 2007, the day of his DUI arrest. Tr. at 158. With regard to his future intentions concerning alcohol, the individual would not absolutely rule out further usage, but he said that if he did choose to drink again, it would be under

"very strict circumstances," where he would not be driving a vehicle afterwards. Tr. at 193. He indicated that his father does keep alcohol in the home that the individual shares with his parents. Tr. at 159-160.

The individual then discussed his DUI arrest and the events leading up to it. After celebrating a friend's wedding by drinking four or five "Jack [Daniels whiskey] and Cokes" at two bars, the individual went to a friend's house, where he consumed three of four beers before falling asleep. Several hours later, the individual awoke, talked to his friends for several minutes, and then decided to go home. Tr. at 174-176. Since he felt fatigued but did not feel that he was inebriated, he decided to drive home. Tr. at 176. While driving on a local highway, he found himself in a situation where he was in between two double tractor-trailers. Because of a high wind, the trailers were "fish-tailing" and coming over the lines and into his lane. Believing himself to be in imminent danger, the individual considered slowing down and allowing the two tractor-trailers to proceed. However, when he noticed a third truck behind him, he decided to speed up, instead, even though he had seen the flashing blue lights of a police car on the side of the road ahead of him. Tr. at 177-180.

After the officer pulled the individual over, the two began arguing about the individual's speed and about the circumstances leading up to the traffic stop. The individual told the officer that he had sped up to 92 mph in order to escape a potentially dangerous situation involving two tractor-trailers. The officer insisted that the individual's speed was 96 mph, and that the officer had not seen any tractor-trailers. The officer administered a field sobriety test which, the individual testified, he passed. The individual pled guilty to DUI, and was placed on probation. Tr. at 181-190. He went on to state that he did not seek counseling after the DUI because he did not, and does not, believe that he has a drinking problem. The individual explained that the DUI, while very serious, was only a single incident, and that he had not exhibited a pattern of excessive drinking. Tr. at 199, 201-202.

The individual also testified about his usage of caffeine and his decision to discontinue use of certain prescribed medications. He stated that he last time that he used a dietary supplement containing caffeine was approximately one month prior to the hearing, and that the last time he took a caffeine pill was when he received the DOE psychiatrist's report (approximately three months prior to the hearing). Tr. at 194.

The individual then discussed his unwillingness to continue taking Paxil and Xanax, two drugs that were prescribed to him for depression. He stated that he was working for an employer who transferred him from a job that he liked and felt qualified to perform, to one that he did not like. When he asked his employer for a transfer, he was told that no transfer could be granted unless he produced a note from a doctor providing a reason that he could not continue to work in his assigned area. When the individual went to his doctor and told him that he needed such a note, the doctor prescribed the two drugs. When the individual discovered that the two drugs were anti-depressants, he went back to the doctor and told him that he had not come to him for drugs, but only for the note. He testified that the doctor did not give him a note, and told him to keep taking the medication. Tr. at 196-197.

The individual also discussed his 2004 failure to follow up on an alleged referral to a psychiatrist that was given to him by an associate of his primary care physician. He explained that, on one visit to the

doctor, his regular primary care provider was not available, so he saw another doctor in the same medical practice. After examining the individual's medical file, he apparently thought that the individual might suffer from Bi-Polar Disorder. He gave the individual a psychiatrist's business card and said to him that "this was the person that we use." Tr. at 197. The individual indicated that he did not consider this to be a referral because the doctor did not actually instruct him to make an appointment with the psychiatrist. Tr. at 197-198.

The individual's mother also testified. She stated that she "lives with him twenty-four/seven and probably know[s] him better than anybody and his daily routines and things he does." Tr. at 59. She explained that the individual live in a basement apartment in their house. Tr. at 60.

The last time she saw the individual use alcohol, she continued, was "probably, two months ago," when he drank a beer while watching TV. Tr. at 59. She indicated that she knows that he doesn't keep alcohol in his apartment because she cleans it sometimes and does not find alcohol there. However, when asked if she ever finds beer cans in his garbage, she replied, "Well, if he has one, yeah, I'll find a can sometimes in the garbage." Tr. at 63. She could not recall the last time that she found an empty beer can in the individual's refuse. *Id.* When asked if she believes that the individual currently uses alcohol, she said, "I think he drinks, yeah." Tr. at 64. She added that, since the DUI, the individual has not consumed alcohol while out with friends, and that she does not believe that he has an alcohol use disorder. She further testified that she is a retired nurse with some experience in psychiatry, and that she would know if he had such a disorder. *Id.* She also stated that she does not have a concern about the individual's use of dietary supplements, energy drinks or caffeine. Tr. at 71-73.

Four of the individual's coworkers testified at the hearing. All of them said that they had known the individual for two to two and one-half years. Three stated that they had not witnessed the individual use alcohol, nor had they seen any evidence of excessive alcohol use. The fourth testified that he saw the individual drink "1 or 2" beers at a cookout in May 2007, but that he, too, had never seen any evidence of excessive use. Three of the co-workers also lift weights, and testified that caffeine usage is necessary to provide energy for the workouts (which are required by their employer) after their 12-hour shifts, or to help them stay awake on their late-night shifts. One said that caffeine usage was "very, very common" among weight lifters. Three of the four also stated that they had not noticed an unusual amount of anxiety of the part of the individual. All testified that the individual was a good worker whom they thought was reliable and trustworthy. Tr. at 9-57, 146-157.

The individual's psychiatrist described his evaluation of the individual. He said that initially, he met with the individual for a brief period, and then had his psychiatric nurse take a thorough history. He examined the individual's medical records and prior evaluations (including the DOE psychiatrist's report), and administered a number of psychiatric tests, including the Substance Abuse Self-Screening Inventory (SASSI), Beck Depression Inventory Two, Beck Anxiety Inventory, and the Bipolar Mood Disorder Questionnaire. After that appointment, he met with the individual again several days later, for a period of 45 minutes to one hour. He asked the individual to bring someone with him who could provide corroborating information about the individual's mood, his alcohol use and other aspects of his life. The individual brought his mother, and the individual's psychiatrist interviewed her for approximately 30 minutes. Tr. at 93-96.

Based on this evaluation, the individual's psychiatrist concluded that the individual did not suffer from any diagnosable psychiatric disorder. Tr. at 99. Specifically, with regard to the individual's anxiety level, the individual's psychiatrist testified that, although he was experiencing some degree of anxiety as a result of this Administrative Review proceeding, his scores on the tests designed to measure anxiety were all in the normal range. Tr. at 99-100. With regard to the individual's alcohol use, his SASSI results were similarly normal. Tr. at 101-103. However, the individual's psychiatrist's conclusion that the individual does not suffer from any alcohol use disorder was not based solely on the SASSI, but also on information about the individual's pattern of alcohol consumption. Although the individual's psychiatrist testified that approximately two-thirds of the people who are arrested for DUI have "a serious alcohol problem," his pattern of drinking only on "special occasions" was an important factor in convincing him that the individual does not have such a problem. Tr. at 103-105.

The individual's psychiatrist then discussed the DOE psychiatrist's report and his reasons for disagreeing with that report. At the outset, he noted that the report discusses the individual's history of treatment for various mental or emotional problems, and observed that this can "bias a psychiatrist, a person against someone's mental state to know that they have tried various medications." Tr. at 106. However, such a bias in this case would be unwarranted, the individual's psychiatrist indicated, for two reasons. First, he believes that the individual's hypopituitarism probably caused many of the symptoms, such as persistent fatigue and decreased libido, that contributed to earlier diagnoses of mental and emotional disorders. [3] Second, the individual was trying to cope with very stressful situations such as two divorces, one of which involved a child whom the individual believed that he fathered, but who turned out to be the product of an adulterous relationship. The individual's psychiatrist opined that the primary care physicians who treated the individual would have been better-advised to refer him to a psychologist for counseling rather than "tossing medication at" the problem. *Id.*

Then, the individual's psychiatrist addressed the diagnosis of Alcohol Abuse. He testified that, in order to qualify for a diagnosis of Alcohol Abuse or Dependence under the Diagnostic and Statistical Manual of Mental Disorders, Volume IV (Text Revision) (DSM-IV-TR), a person must demonstrate a "pattern over time of over-use of a substance with detrimental, negative effects" on the person's life "in various aspects." [4] He does not believe that the individual has demonstrated such a pattern

[3] "Hypopituitarism" is a condition in which a person's pituitary gland does not produce, or produces in insufficient quantities, one or more of the hormones that it is supposed to provide.

[4] According to the DSM-IV TR, Substance Abuse is a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12 month period:

> (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance related absences, suspensions, or expulsions from school; neglect of children or household);
> (2) recurrent substance use in situations in which it is physically hazardous . . .;

(continued...)

with regard to his alcohol usage. Tr. at 109. There have been, he said, "two times in his life when alcohol has created a dysfunction." Tr. at 108. The first was his 1989 arrest for underage drinking, and the second was his May 2007 DUI. In the opinion of the individual's psychiatrist, these incidents, separated by almost two decades, are serious, but do not constitute a pattern of maladaptive use. Tr. at 108-109. Because the individual does not suffer from a diagnosable alcohol use disorder, his psychiatrist does not believe that it is necessary for him to abstain from alcohol use or to undergo counseling. Tr. at 134.

Finally, the individual's psychiatrist did not express concern over the individual's caffeine usage, and he indicated that the relatively large number of psychotropic drugs that had been prescribed for him was not necessarily indicative of a severe mental or emotional disorder. With regard to his caffeine usage, the individual's psychiatrist cited the widespread usage of the drug, and found it to be "not particularly impairing." Tr. at 137. He further stated that general practitioners, such as those whom the individual patronized, often "prescribe medications for minor problems that psychotherapy probably would be better at taking care of." Tr. at 139.

C. Analysis

After reviewing this testimony and the record as a whole, including the exhibits submitted by the parties, I find that the individual has adequately addressed the DOE's security concerns under criterion (h). However, I agree with the DOE psychiatrist that the individual suffers from Alcohol Abuse, with inadequate evidence of reformation or rehabilitation. Consequently, I find that valid security concerns remain under paragraph (j). My reasons for these findings are set forth below.

1. Criterion (h)

As previously set forth, the DOE's primary concerns under this paragraph stem from the DOE psychiatrist's diagnoses of Caffeine-Related Disorder Not Otherwise Specified, and Generalized Anxiety Disorder, and his finding that the "clustering" of "addictive behaviors" by the individual (*i.e.*, alcohol and caffeine use, exercise and/or steroids) calls the individual's judgement and reliability into question. However, the record in this matter leads me to believe that these conditions either do not exist, or do not raise legitimate security concerns.

Although in his report, the DOE psychiatrist found the individual's caffeine usage to be of concern, he changed his mind on this point after hearing the testimony presented at the hearing. That

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[4](...continued)

> (3) recurrent substance related legal problems (e.g., arrests for substance related disorderly conduct);
> (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance . . . .

Furthermore, the symptoms must have never met the criteria for Substance Dependence for the substance in question. DSM-IV TR at 199.

testimony included statements by the individual's co-workers that caffeine is commonly used by weight lifters to provide increased energy for workouts, and by the individual's psychiatrist that he "wasn't overly concerned about [the individual's] caffeine consumption" because it "does not have a major, direct impact" on his occupational functioning. Tr. at 135-136. Accordingly, when asked whether he still had any concerns over the individual's caffeine usage, the DOE psychiatrist stated that he did not. Tr. at 206. I agree with both psychiatrists that the individual's caffeine usage does not pose a security concern.

The DOE psychiatrist also testified at the hearing that the individual's perceived general Anxiety Disorder would not, in the absence of other disorders, comprise a serious security concern. In fact, he said that "in general, people with a little bit of anxiety in a work setting are likely to be good employees," and that the individual's "high level of vigilance and concern about security matters [are] well regarded in his work setting." Tr. at 207. The individual's psychiatrist stated that the tests that he administered to the individual did not reveal any anxiety-related disorder. Tr. at 99-100. Moreover, the individual's behavior and demeanor at the hearing did not reflect the presence of an undue amount of anxiety. Accordingly, I conclude that a security concern does not exist with regard to this issue.

I reach similar conclusions with regard to the individual's alleged "addictive behaviors" concerning exercise and steroid usage. While it is true that the individual's mother was concerned about his workouts as a teenager to the extent that she took the individual to a psychiatrist, that psychiatrist did not diagnose the individual as suffering from any mental or emotional disorder. DOE Exhibit 3 at 4. Moreover, there is no indication that the individual's dedication to working out has caused problems in his personal or professional lives. Indeed, the record indicates that the individual's job requires that he maintain a certain level of physical fitness. With regard to steroids, the individual's last usage of these drugs occurred approximately 20 years ago. *Id.*

Finally, although the individual's failure to take some of the medications prescribed by his primary care provider and to follow up on the referral that he was given are troubling, I find any possible security concerns to be mitigated by the testimony of the individual's psychiatrist and by portions of the DOE psychiatrist's report. As previously set forth, the individual's psychiatrist stated that medical doctors often needlessly prescribe drugs for conditions that are best treated through psychotherapy, and that some of the symptoms for which the drugs were prescribed could have been caused by the individual's hypopituitarism. In his report, the DOE psychiatrist disagreed with the prior "diagnoses" of bipolar disorder that was the cause of the medical doctor's referral, and adult attention deficit disorder, for which the doctor prescribed one of the drugs, Strattera, that the individual decided to stop taking. For these reasons, I conclude that no security concerns currently exist with regard to criterion (h).

2. Criterion (j)

At the hearing, the DOE psychiatrist testified that his diagnosis of alcohol abuse under the DSM-IV-TR was based upon the individual's 1989 arrest for under-aged drinking, two previously-described incidents during the '90s during which he drank large amounts of alcohol with his friends, and his

2007 DUI arrest. Tr. at 211. These incidents do not satisfy the DSM-IV-TR's criteria for alcohol abuse. [5]

However, in a number of previous cases, Hearing Officers have accepted diagnoses of substance abuse as valid even though the diagnosticians did not strictly adhere to DSM-IV guidelines. *See, e.g.*, *Personnel Security Hearing*, Case No. VSO-0482 (2001); *Personnel Security Hearing*, Case No. TSO-0075 (2004). *See also Personnel Security Review*, Case No. VSA-0334 (2001). These cases reflect an understanding that the diagnostic criteria were never intended to be applied in a mechanistic, "cookbook" fashion, but were instead intended "to serve as guidelines to be informed by [the] clinical judgement" of trained mental health professionals. DSM-IV-TR at xxxii. During his testimony, the DOE psychiatrist cited several additional factors in support of his diagnosis.

One of these factors is the level of the individual's intoxication at the time of his 2007 DUI arrest. At 8 a.m. the following morning, three hours after his arrest, the individual's BAC was measured at .16. Based on the average rate at which people of the individual's size process alcohol, the DOE psychiatrist estimated that, at the time of his arrest, the individual's BAC was approximately ".25, .28, roughly three to four times" the legal limit in the jurisdiction in which he was arrested. Tr. at 209-210.

A second factor is the degree of tolerance to the intoxicating effects of alcohol exhibited by the individual during this incident. Tr. at 210. Despite his extreme level of intoxication, the individual testified, he did not feel inebriated, he did not appear intoxicated to a friend, Tr. at 173, and he passed a field sobriety test given by the officer who arrested him. An increased level of tolerance such as that exhibited by the individual is one of the criteria for Alcohol Dependence, and suggests that his previous level of consumption may have been higher than he has claimed.

Third, the individual appears to have minimized his level of alcohol consumption. He has consistently claimed that, on the evening of his arrest, he drank four or five mixed drinks and three or four beers. However, at the hearing, the DOE psychiatrist testified that the individual was "severely intoxicated," and that his BAC was far in excess of what it should have been had he consumed only the amount of alcohol that he claimed. Tr. at 210. Moreover, it is far from certain that the individual was telling the truth when he testified at the hearing that he has not consumed alcoholic beverages since his 2007 arrest. As previously described, the individual's mother testified that she saw him drink a beer while watching television approximately two months prior to the hearing. When asked by the individual whether she was sure that the can that he was drinking from contained beer, she said that she was not sure. The individual claimed that the beverage that his mother saw him consume was, in fact, a protein drink. Tr. at 84. However, other parts of the testimony offered by the individual's mother cast serious doubt on the veracity of the individual's

[5] There is no evidence in the record that the two incidents in the mid-'90s resulted in a failure to meet major role obligations or in legal problems, or that they occurred under hazardous conditions or in spite of the individual's having persistent social or interpersonal problems caused by alcohol consumption. Moreover, the two alcohol-related arrests did not occur within the same 12 month period.

claim of abstinence. When asked on direct examination whether the individual currently drinks alcohol, she replied

> A. I think he drinks, yeah.
> Q. Currently?
> A. I don't know about currently. I couldn't say today or yesterday or last week.
> Q. What level would you put his use of alcohol [at]?
> A. A beer. Occasionally a beer.
> Q. Like one beer after work?
> A. Yeah, when he is not working.

Tr. at 64-65. When asked what led her to believe that the beverage that she saw the individual drink while watching television was beer, she said that "I know he does drink beer once in a while and maybe I just, you know, saw him with a can," and just assumed it was beer. Tr. at 83. Finally, when the individual goes out, she'll say "No drinking. And [the individual] says, 'no, I'm not drinking.'" *Id.* The fact that the individual's mother still finds it necessary to make such a request suggests that the individual has not stopped drinking. [6] These factors adequately support the DOE psychiatrist's departure from the DSM-IV-TR guidelines, and convince me that the individual suffers from Alcohol Abuse.

At the hearing, the DOE psychiatrist described the showing that the individual would have to make in order to demonstrate adequate evidence of reformation or rehabilitation. Specifically, he stated that the individual would have to abstain from alcohol use for one year, and to obtain professional counseling so that he could gain some insight into the dynamics of his disorder and the stressors and triggers that contribute to it. Tr. at 212-216. I agree with these recommendations, and I conclude that because the individual has not received such counseling and has failed to demonstrate the suggested period of abstinence, he is not showing adequate evidence of reformation or rehabilitation.

V. CONCLUSION

Based on the factors discussed above, I conclude that the individual has successfully addressed the DOE's security concerns under criterion (h), but that the criterion (j) concerns remain unresolved. The individual has therefore failed to demonstrate that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the

[6] While it is true that, under the *Adjudicative Guidelines*, an individual can demonstrate adequate evidence of reformation or rehabilitation while engaging in some alcohol consumption, that consumption must be part of a clear, established, and modified pattern of use, after professional counseling, and consistent with the recommendations received through such counseling. *Adjudicative Guideline G*. In this case, there has been no professional counseling, and the individual has not convinced me that he has established a clear pattern of responsible alcohol use.

individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: January 30, 2009